

STATE OF MICHIGAN
COURT OF APPEALS

In re HATHMAN, Minors.

UNPUBLISHED
November 16, 2017

No. 338114
Wayne Circuit Court
Family Division
LC No. 15-520316-NA

Before: MURRAY, P.J., and FORT HOOD and GLEICHER, JJ.

PER CURIAM.

Respondent appeals as of right the orders terminating her parental rights to the minor children under MCL 712A.19b(3)(a)(i) (child’s parent is unidentifiable), (a)(ii) (child’s parent has deserted the child for 91 or more days), (c)(i) (conditions that led to adjudication continue to exist), (c)(ii) (other conditions exist that cause the child to come within the court’s jurisdiction), (g) (failure to provide proper care or custody and not likely to be able to do so within a reasonable time), and (j) (reasonable likelihood that the child would be harmed if returned to parent’s home).¹ We affirm.

Respondent first argues that termination of her parental rights was premature because, while she was provided services, the Department of Health and Human Services (DHHS) failed or refused to continue those services toward the end of her case. “The time for asserting the need for accommodation in services is when the court adopts a service plan” *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). Accordingly, because respondent failed to object to DHHS’s failure to provide her with services, she failed to preserve the issue. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Unpreserved errors are reviewed for plain error affecting respondent’s substantial rights. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

Petitioner has a statutory obligation to make reasonable efforts to reunify a respondent with her children. MCL 712A.18f(4); see also *In re Terry*, 240 Mich App at 26. Thus, reversal of an order terminating parental rights can be necessitated by petitioner’s failure to offer a respondent a reasonable opportunity to participate in services. *In re Mason*, 486 Mich 142, 158-

¹ MCL 712A.19b(3)(a)(i) and (a)(ii) plainly applied to one or more of the children’s fathers and not to respondent, the children’s mother.

160; 782 NW2d 747 (2010). However, a respondent also has a corresponding responsibility to participate and benefit from the services offered by the petitioner. *In re Frey*, 297 Mich App at 248.

The evidence was sufficient to establish that the condition leading to adjudication—respondent’s substance abuse—continued to exist at the time of the termination hearing and respondent’s failure to address her substance abuse problem was not attributable to any deficient effort by petitioner. The record demonstrates that petitioner made reasonable efforts to reunify respondent and the children by adopting a service plan tailored to respondent’s needs and then repeatedly reaching out to her to engage her in services. Respondent was offered services that included, in part, drug screens, individual counseling, and both outpatient and inpatient substance abuse counseling. Respondent irregularly complied with some aspects of those services by testing positive on every drug screen, failing to complete outpatient substance abuse treatment, and leaving an inpatient program twice after only a few days. The foster care worker assigned to respondent’s case during the last few months before her parental rights were terminated admitted to an approximately one-month lag between his assignment to the case and re-referring respondent to services. However, before his assignment to the case, respondent had been offered services—and been noncompliant with those services—for approximately one and a half years. Further, respondent was without services during the month after the foster care worker’s assignment because she had been early terminated from all of her services for the fourth time due to nonattendance. Thus, reasonable services were offered, but respondent failed to either participate or demonstrate that she sufficiently benefited from the services provided. Consequently, DHHS provided respondent with reasonable services in an effort to reunify her with her children, and the trial court did not clearly err by finding insufficient compliance with and benefit from the services provided by DHHS, necessitating the termination of respondent’s parental rights.

Respondent also argues that the trial court erred in concluding that termination of her parental rights was in the children’s best interests. This Court reviews a trial court’s decision regarding the children’s best interests for clear error. *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). “A trial court’s decision is clearly erroneous ‘[i]f although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.’ ” *Id.*, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Whether termination of parental rights is in the children’s best interests must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

“The trial court must order the parent’s rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children’s best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). In making the best-interest determination, the court should weigh all of the evidence and may consider “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *Id.* (citation and quotation marks omitted). Further considerations may include “a parent’s history of domestic violence, the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the children’s well-being while in care, and the possibility of adoption.” *Id.* at 714.

While the bond between respondent and the children may have been strong, that bond does not necessarily outweigh the children’s need for safety, stability, and permanency, which the trial court considered important considerations in its best-interest analysis. See *In re Jones*, 316 Mich App 110, 120; 894 NW2d 54 (2016) (“Though respondent shared a bond with the children, that bond was outweighed by the children's need for safety, permanency, and stability.”). Further, the court made individualized findings regarding the children, noting that several of the children were doing well in pre-adoptive foster homes. The court weighed those foster care placements against placement with respondent, who had an ongoing substance abuse problem and no legal source of income, making her unable to provide stability or permanency for the children. The court also noted respondent’s continued noncompliance with her case service plan over the course of almost two years and the fact that respondent had been given “every opportunity” to address her substance abuse issues but had failed to do so. Accordingly, there was nothing clearly erroneous in the trial court’s best-interest determination, and the trial court did not clearly err by terminating respondent’s parental rights.

Affirmed.

/s/ Christopher M. Murray
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher